

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 776 :
 :
 v. : Case No. PERA-C-10-93-E
 :
 YORK COUNTY :

PROPOSED DECISION AND ORDER

On March 26, 2010, Teamsters Local 776 (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the County of York (County) violated Section 1201(a)(5) of the Public Employe Relations Act (PERA). In its charge, the Union specifically alleged that the County refused to submit the prison counselors' contract negotiations to binding interest arbitration and violated a past practice of the giving the counselors the wage increases received by the correctional officers. On April 14, 2010, the Secretary of the Board issued a complaint and notice of hearing, designating a hearing date of July 19, 2010. After one granted continuance, the hearing was held on November 5, 2010 in Harrisburg. During the hearing on that date, both parties in interest were afforded a full and fair opportunity to present evidence and cross-examine witnesses. Both parties timely filed post-hearing briefs.

The examiner, based upon all matters of record, makes the following findings of fact.

FINDINGS OF FACT

1. The County is a public employer within the meaning of Section 301(1) of PERA. (Joint Exhibits 1 & 2).

2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (Joint Exhibits 1 & 2).

3. The Union filed a petition for representation at Case No. PERA-R-99-516-E, seeking to accrete prison counselors into an existing professional unit of youth counselors, case managers and recreational coordinators. A majority of prison counselors voted in favor of Union representation. (Joint Exhibit 2).

4. On March 17, 2000, the Board certified the Union as the exclusive bargaining representative of County employes in a bargaining unit described as follows:

All full-time and regular part-time professional prison guard employes including but not limited to youth counselors, case managers, recreational coordinators and prison counselors; and excluding management level employes, supervisors, first level supervisors, confidential employes and security guards as defined in the Act.

(Joint Exhibit 1).

5. In the collective bargaining agreement effective January 1, 2004 through December 31, 2007, the County recognized the employes that were certified by the Board in the Board's March 17, 2000 order. The Board's certification order expressly includes prison counselors. (Union Exhibit 1(b)).

6. On May 2, 2000, the County Executive Director of Human Resources wrote to Kevin Cicak, Union Business Agent, and stated the following:

I am requesting you give consideration to an agreement between [the Union] and the County which would allow us to carve out the prison unit counselors as one unit, under one labor contract with the understanding that [the] unit has the same statutory right to progress to binding arbitration in the event we are unable to reach agreement as they would have under the Youth Development Center agreement.

(N.T. 18; Union Exhibit 3).

7. On May 16, 2000, Mr. Cicak agreed to the Executive Director's request with certain conditions. Mr. Cicak stated the following:

The Local Union would agree to negotiate a separate collective bargaining agreement for the prison counselors provided the following points are acceptable:

1. If the Employer raises an issue in the future regarding the appropriate unit in question, the County agrees to be bound by the terms and conditions of the NISI Order of Certification dated March 17, 2000.

2. This prison unit shall maintain any and all rights under the laws of the Commonwealth as they pertain to the current YDC [Youth Detention Center] bargaining unit.

3. An Agreement to this effect must be drafted and signed by both parties. I believe that it would be appropriate to include Warden Hogan in this process for clarification.

(N.T. 19-20; Union Exhibit 4).

8. On May 22, 2000, the County and the Union executed a Stipulated Agreement incorporating the Union's conditions. In the Stipulated Agreement, the parties agreed, in relevant part, to the following:

[T]hat both the Union and the Employer agree to negotiate separate collective bargaining agreements involving those individuals certified by the [Board] involving the York County Youth Development Center, and those individuals certified by the [Board] involving a unit of "counselors" as outlined by the [Board] and employed by the York County Prison.

(N.T. 23; Union Exhibit 2).

9. In 2003, the parties selected Jane Rigler as the neutral interest arbitrator for three different contracts. Ms. Rigler issued her interest award on October 25, 2004. The County's partial arbitrator signed the award on October 27, 2004 and the Union's partial arbitrator signed on November 11, 2004. One of the contracts applies exclusively to the professional prison counselors. (N.T. 15; Union Exhibit 1, Union Exhibit 1(B)).

10. On June 4, 2007, Union Business Agent Mark Andreozzi received an e-mail from Warden Sabol stating, in relevant part, as follows:

As in previous negotiating years, we will address the contracts between the counselors and the maintenance department after the officers' contract has been settled.

(N.T. 35-36; Union Exhibit 8).

11. In September 2009, the Union applied to the Board for a panel of interest arbitrators. On September 15, 2009, the Board submitted to the parties a list of seven interest arbitrators from which the parties were to strike names and choose a neutral interest arbitrator. (N.T. 28-31, 52; Union Exhibit 6).

12. On March 25, 2010, the County's attorney at the time wrote to the Union's attorney as follows:

Please allow this letter to provide you with the County's position regarding the jail counselors' collective bargaining agreement. The County has reviewed the jail counselor job descriptions and is of the opinion that the counselors do not rise to the level of guards and, accordingly, are not entitled to binding arbitration under Act 195.

(N.T. 27, 31; Union Exhibit 5).

13. As of the date of the hearing, the County has refused to strike an arbitrator. (N.T. 31, 36-37, 45, 53).

DISCUSSION

The Union argues that the County violated an agreement established by past practice to apply the wage increases received by the corrections officers to the prison counselors. However, the record lacks substantial evidence to support this position, and I am dismissing this part of the charge. The Union also argues that the County refused to proceed to interest arbitration for the prison counselors based on its unilateral determination that the prison counselors are not guards and therefore not entitled to interest arbitration. I am sustaining this part of the charge.

1. Refusal to Proceed to Interest Arbitration

An employer commits an unfair practice by refusing to proceed to interest arbitration. Commonwealth of Pennsylvania, Office of Administration v. PLRB, 528 Pa. 472, 598 A.2d 1274 (1991); Snyder County Prison Board v. PLRB, 37 PPER 3 (Court of Common Pleas of Snyder County, 2005). The Board's certification of a bargaining unit determines whether an employer must submit an impasse in negotiations with that unit of employees to interest arbitration, not the employer's unilateral determination of job duties or the status of positions in the unit. Bucks County Prison Guards Ass'n v. Bucks County, 38 PPER 146 (Proposed Decision and Order, 2007), aff'd, 39 PPER 160 (Final Order, 2008). Unfair practice proceedings are not the proper forum for litigating the unit placement of employees or positions based on job duties. City of Allentown v. PLRB, 851 A.2d 988 (Pa. Cmwlth. 2004). The Board has emphasized that "[t]he purpose of the unit clarification procedure is to determine whether certain job classifications are properly included in or excluded from a bargaining unit, based upon the actual functions of the job." In the Matter of the Employees of New Castle Area Transit Authority, 14 PPER ¶ 14144 at 303 (Final Order, 1983) (emphasis original).

Moreover, in Office of Administration, a case where the public employer refused to proceed to interest arbitration, our Supreme Court adopted language from a Commonwealth Court case, East Pennsboro Area Sch. Dist. v. PLRB, 467 A.2d 1356 (Pa. Cmwlth. 1983), stating as follows:

"By [sic] allowing the employer to unilaterally refuse to submit a dispute to arbitration would in effect allow the employer's interpretation to control. While the PLRB has statutory authority to determine questions of arbitrability when it decides an unfair labor practice has been committed by a refusal to arbitrate, the Supreme Court has made clear that questions of arbitrability must first be submitted to an arbitrator and that any refusal to arbitrate a dispute concerning a collective bargaining agreement is per se an unfair labor practice."

Office of Administration, 598 A.2d at 1277. The Office of Administration Court also recognized the following:

To conclude otherwise would result in an unwarranted delay of the only recourse available to the members represented herein by [the union]. A protracted litigation process, the alternative required by the court below, contravenes the express policy behind resolving labor disputes, and also conflicts with our clearly stated admonition against the practice of engaging in preliminary litigation to resolve in "one forum the power of another forum to decide the substantive issue."

Office of Administration, 598 A.2d at 1278. Unfortunately, the County's refusal to proceed to binding interest arbitration has resulted in exactly the type of unnecessary and unwarranted delay that the Supreme Court of Pennsylvania warned against and is inconsistent with well-established labor policy in the Commonwealth.

In this case, the Board certified the bargaining unit in the following manner: "[a]ll full-time and regular part-time professional prison guard employees including but not limited to . . . prison counselors." (F.F. 4). Therefore, the Board already determined, through its certified description of the professional prison guard unit, that the prison counselors are guards within the meaning of PERA and are entitled to interest

arbitration. Therefore, evidence of job duties in the instant unfair practice proceeding was not relevant to ruling on the County's refusal strike the names of arbitrators provided by the Board. Both the County and the Union, therefore, are entitled to rely on the Board's unit certification when determining whether to submit an impasse in negotiations regarding a unit of employes to **interest arbitration**. Bucks County, supra. "Indeed, one of the primary purposes of certifying a unit of employes under PERA is to define the nature of the unit such that the employer knows whether it must submit to interest arbitration." Bucks County, 38 PPER 146 at 431.

2. County's Defenses

The County contends that it should have been permitted to litigate the issue of the guard status of the prison counselors. During the hearing, the Union's attorney objected to the County's attempt to introduce evidence of the job duties of the prison counselors. I sustained that objection and excluded the evidence. The basis for the ruling was that evidence of job duties is not relevant in determining whether the County engaged in unfair practices for refusing to proceed to interest arbitration. (N.T. 55).

The County cites In the Matter of the Employes of Westmoreland County, 32 PPER ¶ 32133 (Proposed Order of Unit Clarification, 2001) and argues that, in that case, "a Unit Clarification Petition was litigated because, although Prison Counselor duties had not changed, the actual status of Counselors as guards had never been the subject of a hearing." (County Post-hearing Brief at 4). This argument, however, undermines the County's position. A proceeding to litigate a unit clarification petition or a representation petition is exactly the vehicle the County should use to litigate the job duties of the prison counselors to determine whether those positions should be included in a bargaining unit of guards. Allentown, supra; Newcastle, supra. Indeed, the purpose of unit clarification and representation proceedings is to place the issue of defining the appropriateness of the unit before the Board for determination. Bucks County, supra.

As the examiner in Westmoreland properly concluded, where the status of a position has not been determined by the Board through litigation, the job duties of the position may be litigated one year after the parties agreed to place the position in the unit. Here, because the inclusion of the position of prison counselor in the unit of professional prison guards was agreed upon rather than litigated, the County may file a unit clarification petition to have the Board examine the job duties performed by employes in those positions. I excluded the testimony concerning the job duties of the prison counselors here because this is an unfair practice proceeding to determine whether, inter alia, the County violated PERA by refusing to proceed to interest arbitration for the prison counselors which the Board has placed in a professional unit of guards. The Board has held that, "[i]t is the duty of the Board, and not the right of the employer unilaterally, to determine the **appropriateness** of a bargaining **unit**." FOP, Haas Memorial Lodge No. 7 v. City of Erie, 19 PPER ¶ 19188 at 455 (Final Order, 1988). By arguing that the duties of the prison counselors are relevant in an unfair practice proceeding to determine whether those employes are guards under PERA, the County is attempting to **usurp** the role of the **Board** in defining the composition of the bargaining unit in a unit clarification procedure.

The County also argues that the charge should be dismissed because the Union seeks to arbitrate regarding an inappropriate unit. (County's Post-hearing Brief at 5). However, the record is clear that the County not only agreed to bargain with the Union as if the prison counselors were in their own unit, it was the County's idea to do so. On May 2, 2000, the County's Human Resources Director requested that the Union agree to permit the County to "carve out the prison unit counselors as one unit, under one labor contract with the understanding that [the] unit has the same statutory right to progress to binding arbitration in the event we are unable to reach agreement as they would have under the Youth Development Center agreement." (F.F. 6). This letter makes clear that the County understood and conveyed to the Union that the prison counselors were entitled to interest arbitration and should be treated as a separate unit for purposes of bargaining.

On May 22, 2000, the County and the Union executed a Stipulated Agreement wherein the County agreed to negotiate a separate agreement for the prison counselors.

Subsequently, in 2003, the parties proceeded to interest arbitration for the professional guard unit and the nonprofessional guard unit. Three separate contracts resulted from that interest arbitration with the prison counselors receiving their own contract. Also, on June 4, 2007, the prison warden e-mailed the Union stating that it was her understanding that negotiations regarding the prison counselors would begin after the corrections officers have a contract. The record, therefore, clearly demonstrates that the County expressly understood that the prison counselors, not only would be treated as their own unit for bargaining purposes, but also that they are entitled to interest arbitration. Accordingly, the County engaged in unfair practices when it refused to proceed to interest arbitration regarding the prison counselors.

Additionally, seeking interest arbitration solely for the prison counselors is not inappropriate because they are part of a larger unit of employes in the Youth Detention Center. Employers and unions proceed to interest arbitration only over matters in dispute. Submitting the wages, hours and other terms and conditions of employment to interest arbitration for only the prison counselors is necessary if those are the only issues in dispute for the bargaining unit.

CONCLUSIONS

The hearing examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds as follows:

1. The County is a public employer within the meaning of Section 301(1) of PERA.
2. The Union is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The County has committed unfair practices in violation of Section 1201(a)(5) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employee Relations Act, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the County shall

1. Cease and desist from refusing to bargain collectively in good faith with the employe organization which is the exclusive representative of employes in an appropriate unit, including but not limited to discussing of grievances with the exclusive representative.

2. Cease and desist from refusing to strike names from the list of arbitrators provided by the Board and from refusing to submit the bargaining impasse regarding the prison counselors to interest arbitration;

3. Take the following affirmative action:

(a) Submit to the Union in writing an offer to proceed to interest arbitration on behalf of the prison counselors;

(b) Strike names of arbitrators from the list of arbitrators provided by the Board until a neutral interest arbitrator is selected to hear the bargaining impasse and;

(c) Post a copy of this Decision and Order within five (5) days from the effective date hereof in a conspicuous place readily accessible to the bargaining unit employes and have the same remain so posted for a period of ten (10) consecutive days; and

(d) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this Decision and Order by completion and filing of the attached Affidavit of Compliance.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty days of the date hereof, this decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this seventh day of January, 2011.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO, Hearing Examiner